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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

11 MATTHEW J. SILVA,

12 Plaintiff(s),

13 v.

14 STATE OF NEVADA, et al.,

15 Defendant(s).

Case No.: 2:16-cv-00348-RFB-NJK

**REPORT AND RECOMMENDATION**

16 This matter is before the Court on the lack of service on Defendant Martinez. *See* Docket  
17 No. 37. The Court recently outlined the procedures and responsibilities attendant to effectuating  
18 service in a prisoner civil rights case in which the plaintiff is proceeding *in forma pauperis*:

19 In cases involving a plaintiff proceeding *in forma pauperis*, service  
20 on the defendant may be effectuated by the United States Marshal.  
21 Nonetheless, it is ultimately the plaintiff's responsibility to obtain  
22 an address at which the defendant may be served by the Marshal.  
23 Moreover, when the Marshal is not able to effectuate service based  
24 on the information provided, the plaintiff must seek further relief to  
remedy that situation. . . . [I]t is [the plaintiff's] responsibility once  
the initial service attempt proved unsuccessful to file a motion  
identifying the unserved Defendant(s) and specifying a more  
detailed name and/or address for said Defendant(s), or whether some  
other manner of service should be attempted.

25 *Gibbs v. Fey*, 2017 WL 8131473, at \*3 (D. Nev. Nov. 14, 2017) (internal citations and quotations  
26 omitted), *adopted*, 2018 WL 1157544 (D. Nev. Mar. 2, 2018).

27 This same procedure has been specifically identified to Plaintiff in this case. Docket No.  
28 37. Given the inability to serve Defendant Martinez to date, the Court expressly ordered Plaintiff

1 to file “a motion specifying a more detailed name and/or address to serve Defendant Martinez, or  
 2 specifying some other manner of service that should be attempted. Such motion must be filed by  
 3 **August 27, 2018.**” *Id.* (emphasis in original). The Court warned that the failure to file that motion  
 4 would result in a recommendation that this case be dismissed pursuant to Rule 4(m) of the Federal  
 5 Rules of Civil Procedure. *Id.*; *see also Gibbs*, 2017 WL 8131473, at \*4. To date, Plaintiff has not  
 6 filed that motion.

7 In short, Plaintiff has had ample time and numerous opportunities to identify a means by  
 8 which Defendant Martinez can be served, and he has not identified any such means. Moreover,  
 9 Plaintiff was expressly warned that the failure to file a motion so specifying by August 27, 2018,  
 10 would result in a recommendation of dismissal. Accordingly, the undersigned **RECOMMENDS**  
 11 that this case should be **DISMISSED** as to Defendant Martinez for lack of service.

12 Dated: September 24, 2018

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 15 Nancy J. Koppe  
 16 United States Magistrate Judge

### 17 NOTICE

18 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be  
 19 in writing and filed with the Clerk of the Court within (14) days after service of this Notice. The  
 20 Supreme Court has held that the courts of appeal may determine that an appeal has been waived  
 21 due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142  
 22 (1985), *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that (1) failure to file  
 23 objections within the specified time and (2) failure to properly address and brief the objectionable  
 24 issues waives the right to appeal the District Court's order and/or appeal factual issues from the  
 25 order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*  
 26 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).